

Doc. 45-42

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October 19, 1989

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OCT 19 1989

Federal Communications Commission
Office of the Secretary

By: Hand Delivery

Mr. Roy J. Stewart
Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Request of A.C. Nielsen Company
for Permissive Authority to Use
Line 22 of the Active Video
Signal; FCC Public Notice No.
DA 89-1060

Dear Mr. Stewart:

On October 18, 1989, we filed on behalf of A.C. Nielsen Company ("Nielsen") a letter in response to comments filed in the above-referenced proceeding by the National Broadcasting Company and "Winkler Video Associates." A review of Nielsen's October 18th the letter as filed reveals that a typographical error (the inadvertent deletion of the words "Commission. No...") appeared on the first line of page 4 of the letter. To avoid any further confusion in this matter, we have enclosed for filing in this proceeding a revised version of Nielsen's letter, which corrects this error. We request that the Commission and all served parties discard the prior version filed on October 18th.

Please refer all inquiries regarding this matter to the undersigned.

Sincerely,


Grier C. Raclin

cc: All Parties on Attached List

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Federal Communications Commission
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Re: Request of A.C. Nielsen Company
for Permissive Authority to Use
Line 22 of the Active Video
Signal; FCC Public Notice No.
DA 89-1060

Dear Mr. Stewart:

This letter is written on behalf of A.C. Nielsen Company ("Nielsen") in response to certain comments filed in the above-referenced proceeding, which were either not included in, or inadvertently removed from, the Commission's public files. Nielsen had no knowledge of these Comments at the time it filed its Reply Comments on October 2, 1989.

In its September 22, 1989 Comments, the National Broadcasting Company ("NBC") suggested that:

stations whose equipment automatically strips the VBI could use a converter box that would transfer Nielsen's line 20 information to line 22 of the videotape of the program as it is recorded and then transfer the information back to line 20 on playback for broadcast.

NBC Comments at 6. This unsupported and cryptic suggestion was relied upon heavily by Airtrax in its "Reply Comments" as potentially offering an "entirely new strategy" for remedying the stripping problem that otherwise requires the use of line 22 to transmit Nielsen's SID Codes. Airtrax Reply Comments at 9 and see Nielsen's Comments at 9-12 (describing the stripping

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problem). Because NBC's Comments apparently were not maintained in the Commission's public files^{1/} and Nielsen was not otherwise aware of NBC's suggestion until reviewing Airtrax's Reply Comments,^{2/} Nielsen seeks this opportunity to explain why this suggestion is unworkable.

First, to the best of Nielsen's knowledge, even after inquiring into this matter with NBC, no such "converter" exists. Moreover, based upon Nielsen's review of the limited information provided, it would take many months of effort and thousands of development dollars to design and manufacture such a device, if it could be done at all. Thus, this proposal does not offer any realistic solution to the stripping problems that inhibit the syndicated programming industry's receipt of more accurate program ratings. See Nielsen's Comments at 10-12, 18-19, and Nielsen's Reply Comments at note 20.

Second, even if the suggested technology could be developed in a timely manner, it is questionable whether its implementation would result in ratings of sufficient reliability to be acceptable to the broadcast industry. Implementation of the NBC suggestion would require every syndicated program producer, post-production house and virtually all broadcast stations^{3/} to install and correctly operate the "converter," a process of unknown complexity given that the technology doesn't exist. In light of the fact that the principal goal to be achieved by the use of line 22 to transmit Nielsen's SID Codes is to improve the accuracy of ratings estimates provided to the syndicated

^{1/}This was not the only procedural irregularity that Nielsen has confronted in this proceeding. See Nielsen's Reply Comments at note 11.

^{2/}While the Certificate of Service attached to NBC's Comments notes that counsel for Nielsen was served with those Comments on September 22, 1989, the undersigned never received a copy of NBC Comments prior to obtaining a copy directly from NBC on October 12, 1989.

^{3/}As Nielsen already has noted, the line 20 stripping problem is not the result of a lack of cooperation by a few stations, it occurs at various times in the broadcast of syndicated programming by most stations. See Nielsen's Comments at 10-12 and at notes 12 and 13, and Nielsen's Reply Comments at note 25. Moreover, it is abundantly clear to Nielsen, based upon its long experience with the current "in-station" AMOL methodology, that few, if any, stations would tolerate Nielsen's installing or maintaining such converters in the limited space available in most broadcast stations.

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programming industry, see Nielsen's Comments at 9-12, an untested assumption (of doubtful validity) of the reliability of this proposed technology would not be a sound basis for a decision on Nielsen's Request for Permissive Authority.

Third, implementation of the NBC proposal would require a line in the active video signal either to be blank at the time of broadcast, or would require the transmission of duplicate lines. Once a line in the active video signal -- whether that be line 22 or 23 or some other line -- has been encoded with SID Codes, even for a temporary period, that line cannot be "reloaded" with the video signal that resided on that line prior to the encoding process. Thus, were the Codes to be later transferred to line 20, the line in the active signal which temporarily housed the Codes would either remain blank or would have to be "loaded" with information already being transmitted on another line of the video signal (i.e., a duplicate transmission).

Finally, even if the technology existed and could be implemented reliably and without adversely affecting broadcast service, the expense involved in implementing this proposal would likely be prohibitive. As stated above, it would cost thousands of dollars to design, manufacture and install each such converter, and more than a thousand of those converters would have to be installed to implement the NBC proposal. Thus, it would cost millions of dollars to implement the NBC proposal, a totally unnecessary cost given that such implementation would be directed toward "solving" a problem that does not even exist.^{4/}

At page 5 of its Comments, NBC also "urges" the Commission to gather sufficient information to "satisfy itself" that Nielsen's use of line 22 will not degrade television service. As set forth in its Comments at pages 5, 12-14, Nielsen believes that it has provided more than sufficient information on which to base such a determination. Nevertheless, it was exactly to provide such additional information that Nielsen requested, on August 14, 1989, Special Temporary Authority to transmit SID Code on line 22. Notwithstanding Nielsen's and the syndicated programming industry's repeated requests for review and granting of this STA Request, and the specific request made by the Commission itself in its Public Notice for the information that would have been provided by Nielsen had the STA been granted in a timely manner, Nielsen's STA Request is still pending with the

^{4/}See Nielsen's Comments at 15-18 and Reply Comments at 5-9, 22-24 (Nielsen's use of line 22 will not preempt other uses of that line to provide services demanded by the marketplace, and the Commission should not seek to identify and impose a technical "fix" based upon current technology in any case).

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Commission. No reason whatsoever has been provided by the Commission for the extraordinary and extensive delay in ruling on Nielsen's STA Request, and Nielsen again urges the Commission to grant its Request for an STA immediately.

There apparently were other comments filed in this proceeding which were not maintained in the Commission public files and which Nielsen had no notice of until obtaining copies from the Mass Media Bureau's informal files. For example, on September 22, 1989, a Mr. Robert C. Winkler of "Winkler Video Associates" apparently filed Comments stating that he had "reviewed the requests made by [Nielsen] to use a 'interval coding' on line 22" and, based upon his "dealing with such a request," found it "unworkable." Nielsen is at a loss to respond to Mr. Winkler's "Comments," not only because it has no knowledge of Mr. Winkler's experience in "dealing with such a request," but, more importantly, because Nielsen never filed any such a "request." Mr. Winkler obviously was referring to the lengthy, and entirely speculative, description of a manual "interval-encoding" process provided by Airtrax in its Comments and elsewhere. See Airtrax's Comments at 23-28. That description - and Mr. Winkler's conclusions as to the "workability" of that "process" -- are irrelevant; Nielsen has never proposed the use of such a manual encoding process.^{5/}

In closing, Nielsen again urges the Commission to undertake its most expeditious review and grant of Nielsen's Requests for an STA and for permanent Permissive Authority. As stated repeatedly by Nielsen and others, the syndicated programming industry has a right and urgent need for more accurate ratings, the provision of which can only be obtained through use of line 22 to transmit Nielsen's SID codes. Every day that the Commission delays in ruling on Nielsen's Requests harms not only the syndicated programming industry, but also advertisers, their agencies, independent broadcast stations and television viewers themselves.

^{5/}Nielsen has suggested to the Commission, on the other hand, that it need not address this area at all because of the availability of technology that would automatically accomplish "interval encoding" if demanded by the marketplace. See Nielsen's Comments at 18 and Reply Comments at 23-24.

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Any questions regarding this matter may be referred to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Grier C. Raclin". The signature is stylized with a large initial "G" and a prominent "R".

Grier C. Raclin
Counsel for A.C. Nielsen Co.

cc: All Parties on Attached List

CERTIFICATE OF SERVICE

I, Arlene F. Lacki, a secretary in the law firm of Heron, Burchette, Ruckert & Rothwell, do hereby certify that I have on this 19th day of October, 1989, caused copies of the foregoing to be hand-delivered to the following:

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*The Honorable Alfred Sikes
Chairman, Federal Communications Commission
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*The Honorable James H. Quello
Member, Federal Communications Commission
1919 M St., N.W.
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*The Honorable Sherrie Marshall
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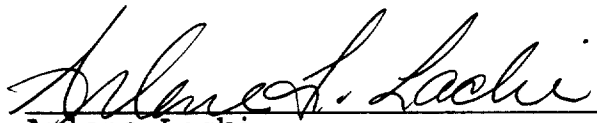
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***HAND DELIVERY**


Arlene Lacki